

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTH DISTRICT OF CALIFORNIA

3 SAN FRANCISCO DIVISION

4 FINJAN, INC.,

5 Plaintiff,

6 v.

Case No. 3:13-CV-005808-HSG

7
8 PROOFPOINT, INC. AND ARMORIZE
9 TECHNOLOGIES, INC.,

10 Defendants.
11

12 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

13 PURSUANT TO PROTECTIVE ORDER

14 VIDEOTAPED DEPOSITION OF

15 MICHAEL FRANZ, Ph.D.

16
17 November 18, 2015

18 9:35 A.M.

19
20
21 50 California Street, 22nd Floor

22 San Francisco, California

23
24 REPORTED BY: INGRID SKOROBOHATY, CSR NO. 11669

25 Job No. J0244511

1 Q. And going back to my question, what do you
2 mean by "under Finjan's interpretation"?

3 A. So I believe that Finjan's interpretation of
4 the individual claim terms is broader than my own.

5 Q. And do you provide a -- a different
6 limitation-by-limitation analysis under each
7 interpretation?

8 A. I do not.

9 Q. So the exhibits -- those Exhibits A and F,
10 those are under which interpretation of the claims?

11 A. They're actually -- as I said, they're
12 actually under Finjan's interpretation, which is the
13 broader one.

14 Q. So you do not have a limitation-by-limitation
15 analysis under your own interpretation of the asserted
16 claims, correct?

17 A. I have not distinguished between the two.

18 Q. What do you mean, "not distinguished between
19 the two"?

20 A. So, you know, since -- since both Islam --
21 and -- and Abadi actually, you know, have every --
22 disclose every element, you know, even under the broader
23 terms, that is the -- that's what I'm showing in the --
24 in the exhibit.

25 Q. So just to be clear, you -- all of the

1 exhibits from A1 to H3 are under Finjan's interpretation
2 of the asserted claims and not under your interpretation
3 of the asserted claims?

4 A. You're saying all the exhibits for this
5 patent, or for all of them?

6 Q. For all the patents asserted in this case. I
7 believe it's Exhibits A1 to H3.

8 A. Yes, I -- yes.

9 Q. Please direct your attention -- sorry. Strike
10 that.

11 What are your obviousness theories for the
12 '844 and '086 patents?

13 A. That -- written it down -- down there so
14 that -- you know, so Islam, alone and in combination
15 with a lot of these -- a lot of these combinations,
16 makes the -- each of these patents obvious, and also
17 Abadi, alone and in combination with these, makes these
18 asserted claims obvious.

19 Q. Are you referring to paragraph 274 of your
20 report, or 273 in your report?

21 A. 273 and 274, yes.

22 Q. So is it fair to say that one of your
23 obviousness theories is Islam alone renders the asserted
24 claims of the '844 and '086 patent obvious?

25 A. Well, if it anticipates the asserted claim,

1 then it also, obviously, makes them obvious.

2 Q. Is it also fair to say that Islam, in
3 combination with Ji, Necula and Abadi and Thunderbyte,
4 renders the asserted claims of the '844 and '086
5 obvious?

6 A. Correct.

7 Q. And another obviousness theory is that Islam
8 and Abadi alone renders the '844 and '086 patent
9 obvious, correct?

10 A. Well, if Islam alone anticipates and Abadi
11 alone anticipates and renders obvious, then, obviously,
12 in combination, they would also.

13 Q. And another obviousness theory is that Islam,
14 in combination with Ji and Abadi, renders the '844 and
15 8 -- '086 patents obvious?

16 A. Yeah.

17 So, you know, as I said, Islam and Abadi both,
18 by themselves -- and there's actually a lot of prior
19 art, so, you know, if you want to add more for color,
20 then, you know, there are actually many pieces of -- of
21 prior art that also have important elements that -- that
22 appear in these -- these asserted claims.

23 Q. Is it also fair to say that another
24 obviousness theory is that Abadi, in combination with
25 Ji, Necula, Isaak, and Thunderbyte?

1 A. I -- that's what I've written there, yes.

2 Q. Finally, another combination is that Abadi, in
3 combination with Ji and Islam, renders the '844 and '086
4 patents obvious?

5 A. Yes.

6 Q. Is there any obviousness theories that -- that
7 I did not identify?

8 A. Well, if you look at my -- my appendix, you
9 know, I've actually, for -- for each claim term, put a
10 whole list of matching prior art, and if -- you know, if
11 you just look at -- there will be other combinations
12 that also would -- would show obviousness, but if
13 it's -- it's a combinatorial explosion, so I haven't
14 actually listed all combinations; because, as I said,
15 you know, Islam alone and Abadi alone already do the
16 job.

17 Q. What do you mean by "a combinatorial
18 explosion"?

19 A. Well, there will be other -- you know, you
20 have claim terms and you have prior art that -- that
21 matches these claim terms. So, you know, you -- you
22 could cover these claim terms probably using other
23 combinations because there's so much prior art.

24 Q. Can you point me to these other obviousness
25 theories in your report? I believe you said table -- is

1 it Table A or --

2 A. So the -- the -- the -- the Exhibit -- yeah --
3 A1, A2, F1, and F2 are the two tables that show the
4 obviousness elements.

5 Q. So is it fair to say for your -- strike that.

6 So is it fair to say that you have at least
7 eight obviousness theories for the '844 and '086 patents
8 stated here in your report in 273 and 274?

9 MR. HAMSTRA: Objection to the extent it calls
10 for a legal conclusion.

11 THE WITNESS: I don't see where you get eight
12 from.

13 BY MR. LEE:

14 Q. I believe you said, for example, the first one
15 is Islam alone is -- is one of your theories and then
16 also Islam in combination with Ji and Necula and Abadi
17 and Thunderbyte?

18 A. So you mean each bullet is one theory, because
19 there are ten bullets, not eight. That's why I'm
20 asking.

21 Q. All right. Ten bullets. All right.

22 Is it -- is it fair to say that there's --
23 you're relying on ten obviousness theories for the '844
24 and '086 patents?

25 A. Yeah, so these are the combinations that I've

1 is another obviousness theory.

2 And the final one is Miller alone or in
3 combination with Kramer and AppletTrap?

4 MR. HAMSTRA: Objection to the extent it calls
5 for a legal conclusion.

6 THE WITNESS: I'm saying, earlier in this
7 report, that Kramer and Miller each anticipate, and
8 then, obviously, that makes them -- they also each
9 alone, you know, render the -- the asserted claims
10 obvious, and then these other additional cited
11 references again add color to -- you know, yes.

12 BY MR. LEE:

13 Q. So is it fair to say that 842 lists at least
14 one, two, three, four -- five obviousness theories?

15 MR. HAMSTRA: Objection to the extent it calls
16 for a legal conclusion.

17 THE WITNESS: So I provided a table that
18 summarizes all the -- the elements of obviousness, yes.

19 BY MR. LEE:

20 Q. Are -- are you saying there's -- there's more
21 than these -- these five obviousness theories listed in
22 paragraph 842 for the '918 patent?

23 A. So these are specific ones that I've thought
24 through. There might be additional ones.

25 Q. And those are in a -- those are in a -- a

1 actually detailed in -- in the table, but these are
2 combinations that show obviousness.

3 BY MR. LEE:

4 Q. You have at least five different obviousness
5 theories listed here, right, in paragraph --

6 A. I'm showing five --

7 MR. HAMSTRA: Same objection.

8 THE WITNESS: -- I'm showing five different
9 combinations, yes.

10 BY MR. LEE:

11 Q. And you're -- just to be clear, you're saying
12 the exhibits have more obviousness theories, correct?

13 A. The appendices show all the elements, and I'm
14 not sure, right now, if there might be additional
15 combinations. I haven't worked those through, but, you
16 know, since we have two main references that actually
17 alone show this, then, you know, this is just
18 combinatorial theory, but if you have something that does
19 alone, then -- and several other elements, there might
20 be more combinations.

21 Q. Any other combinations come to mind?

22 A. I -- as I said, I haven't worked it -- these
23 are combinations I've actually worked through.

24 Q. And just to be clear, these combinations are
25 the basis for your obviousness opinion, correct?

1 A. Correct.

2 Q. And that goes for the other patents in this
3 case as well, the -- the various combinations are the
4 basis for your obviousness opinion, correct?

5 A. Well --

6 MR. HAMSTRA: Objection: Vague.

7 THE WITNESS: -- I mean, each combination
8 alone already shows obviousness.

9 BY MR. LEE:

10 Q. So there is other combinations as well also
11 show obviousness in your report, right?

12 MR. HAMSTRA: Objection: Vague.

13 MR. LEE: So --

14 THE WITNESS: Okay.

15 BY MR. LEE:

16 Q. I just want to make sure, like, the -- the
17 combinations that we went through, each of these
18 combinations are supporting your obviousness opinion in
19 this case, correct?

20 MR. HAMSTRA: Objection: Compound, lacks
21 foundation.

22 THE WITNESS: Each combination does support --
23 you know, is additional support, yes.

24 BY MR. LEE:

25 Q. And there is multiple combinations, correct --

1 question again?

2 BY MR. LEE:

3 Q. Sure.

4 So I just want to make, like, when you say --
5 okay.

6 One of your obviousness theories is the
7 combination of Abadi, Ji, Necula, Isaak, and
8 Thunderbyte, so that's five prior-art references.

9 A. Yes.

10 MR. HAMSTRA: Objection: Misstates the
11 document.

12 BY MR. LEE:

13 Q. When you say you're relying on this
14 combination, you're not saying you're -- you're relying
15 on every single prior reference, right? You're not
16 relying on just, say, two or three of these?

17 MR. HAMSTRA: Objection: Misstates the
18 document.

19 BY MR. LEE:

20 Q. Does that make sense?

21 A. So -- so what I'm saying is that all of the
22 inventive concepts in the patent are present in the
23 union of these prior-art references.

24 Q. I'm just trying to understand if there's more
25 combinations other than the five prior-art references

1 you identified.

2 You know, so are you saying that one
3 obviousness theory is the combination of Abadi, Ji,
4 Necula, Thunderbyte, and Isaak, but within this
5 combination, you're also saying that Abadi and Ji is
6 another obviousness theory?

7 MR. HAMSTRA: Objection: Vague, misstates
8 report.

9 THE WITNESS: That's what I'm saying in the
10 report, yes.

11 BY MR. LEE:

12 Q. Are there any differences between the prior
13 art and the claims at issue in the '844 and '086
14 patents?

15 MR. HAMSTRA: Objection: Vague.

16 THE WITNESS: Difference in the -- between the
17 prior art and the --

18 BY MR. LEE:

19 Q. In the, yeah, claimed invention.

20 Here, maybe if it helps, I'll direct your
21 attention to -- to page 86 of your report?

22 Do you see the heading "Differences between
23 the claimed invention and the prior art"?

24 Do you see that section?

25 A. Yes, I see that.

1 I, MICHAEL FRANZ, Ph.D., do hereby declare
2 under penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as appear
4 noted, in ink, initialed by me, or attached hereto; that
5 my testimony as contained herein, as corrected, is true
6 and correct.

7 EXECUTED this _____ day of _____,
8 20_____, at _____, _____.
9 (City) (State)

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12 _____
13 MICHAEL FRANZ, Ph.D.
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REPORTER'S CERTIFICATION

I, INGRID SKOROBHATY, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: December 1, 2015



INGRID SKOROBHATY, C.S.R. No. 11669